

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE K. CHRISTIAN,

Defendant-Appellant.

UNPUBLISHED

January 24, 2003

No. 230896

Wayne Circuit Court

LC No. 99-005356

Before: Zahra, P.J., and Murray and Fort Hood, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of assault with intent to do great bodily harm less than murder, MCL 750.84, unarmed robbery, MCL 750.530, and carjacking, MCL 750.529a. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of ten months to ten years for the assault conviction, three to fifteen years for the robbery conviction, and five to fifteen years for the carjacking conviction. Defendant appeals as of right, and we affirm.

This case stems from allegations that defendant assaulted, robbed and carjacked the complainant, with the assistance of codefendant Darryl McFall. Defendant and the codefendant, who was convicted of unarmed robbery on an aiding an abetting theory, were tried jointly.

Defendant's sole claim on appeal is that he is entitled to a new trial because the prosecutor improperly argued facts not in evidence during closing argument. To support this claim, defendant relies on the prosecutor's remark in closing argument that the defendants decided to rob the complainant because they knew he was a homosexual. Because defendant did not object to this statement, we review this unpreserved claim for plain error affecting his substantial rights, i.e., that it affected the outcome of the proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). A prosecutor may not make a statement of fact to the jury that is unsupported by the evidence. *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994). However, a prosecutor is free to argue the evidence and all reasonable inferences from the evidence as it relates to his theory of the case. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

During trial, the complainant testified regarding his sexual orientation and his concern about the impact of the beating on his health because he was weak and had a terminal illness. Although the prosecutor attempted to make a connection between the complainant's sexual

orientation and the assault, we agree with defendant that there was no evidence presented to support an inference that the complainant's sexual orientation was known to defendant and was a basis for the attack. However, viewed in context of the complete closing argument, the prosecutor's remark did not affect defendant's substantial rights. *Carines, supra*. The prosecutor's comment occurred during a lengthy discussion of the evidence, was isolated, and was not so inflammatory that defendant was prejudiced. Moreover, the trial court instructed the jury that the lawyers' comments were not evidence and that the jury should not be influenced by sympathy or prejudice. The instructions were sufficient to cure any prejudice. *People v Long*, 246 Mich App 582; 588; 633 NW2d 843 (2001), citing *Bahoda, supra* at 281. Juries are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). In sum, defendant has failed to show a plain error affecting his substantial rights. *Carines, supra*. Accordingly, reversal is not warranted on the basis of this unpreserved issue.

Affirmed.

/s/ Brian K. Zahra
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood